IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN

S.B. Criminal Jail Appeal No.1032/2005

1. Devilal S/o Shri Laxman
2. Nathu S/o Shri Bhura Nath
3. Ramesh @ Radheyshyam S/o Shri Devi
4. Bhima S/o Shri Bholenath

...accused-appellants

Versus

State of Rajasthan through Public Prosecutor
...respondent

Date of Order ::: 26.4.2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Amit Punia, Amicus Curiae,
for accused-appellants
Smt. Nirmala Sharma, P.P., for the State

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BY THE COURT:-

Accused-appellants, namely, 1. Devilal S/o Shri Laxman, 2. Nathu S/o Shri Bhura Nath, 3. Ramesh @ Radheyshyam S/o Shri Devi, and 4. Bhima S/o Shri Bholenath, preferred this 'Jail Appeal' through the Superintendent, Central Jail, Ajmer, challenging the order dated 13.9.2005 of their conviction and sentence passed by the Additional District & Sessions Judge, Fast Track No.3, Ajmer, Camp Kishangarh, in Sessions Case No.21/2005, whereby they have been convicted and sentenced as under:-

Under Section	*Sentence of Imprisonment (to each accused)*
393, IPC	To undergo 4 years rigorous imprisonment and a fine of Rs.500/-; in default of payment of fine, to further undergo two months additional simple imprisonment.
332 read with Section 34, IPC	To undergo 2 years rigorous imprisonment and a fine of Rs.250/-; in default of payment of fine, to further undergo one month's additional simple imprisonment.

Both the sentences were ordered to run concurrently.

Briefly stated the facts of the case are that Exhibit P-19, the First Information Report No.112/2004, was registered by Dinesh Kumar, In-charge, Police Station, Rupangarh, at Police Station Rupangarh, District Ajmer, under Sections 143, 341 and 323, IPC, wherein it was mentioned that he had gone on petrolling duty at about 11.20 PM and at bout 11.40 PM he received a wireless message from the Circle Officer, Circle Kishangarh, that near Sursura Beed (Forest) Mod, one punctured truck is standing on the highway, therefore, they should reach immediately at the spot. Thereafter they proceeded for the spot. They went there and saw that one truck No.RJ 06 G 3382 was there in a punctured condition. The Deputy Superintendent of Police and other Constables with gunman were also there. They saw about 7-8 persons, who, after seeing the police-party, fled.

Constable Datar Singh caught hold of one person but another person immediately came and inflicted injuries on his person and got him free from his custody and thereafter they ran away.

During investigation of the case, the accused-persons were arrested and on their information under Section 27 of the Evidence Act, two axes with wiring were recovered vide recovery-memo Exhibit P-11 at the information/instance of accused Nathu and three 'lathis' (sticks) with wiring were recovered on the information/instance of accused persons Devilal, Ramesh and Bhima, vide recovery-memos Exhibit P-8, Exhibit P-9 and Exhibit P-10.

After completion of investigation, the police filed a charge-sheet against all four accused-persons under Sections 143, 341, 323, 332, 353, 393, 398 and 307, IPC. The learned trial court framed charge against all the four accused-persons for the offence under Sections 398 and 332 read with Section 34, IPC, which were denied and trial was claimed.

The trial court after considering the prosecution evidence on the record convicted and sentenced the accused-appellant, as mentioned above.

The learned counsel for the accused-appellant contended that from the statement of PW-1 Datar Singh,

PW-2 Madanlal and other prosecution witnesses, it is clear that no act has been assigned to accused-appellants to prove an attempt to commit robbery and, without any evidence, the trial court committed an illegality in convicting the accused-persons under Section 393, IPC. He further contended that even truck-driver PW-5 Jawrilal was declared hostile in the present case.

So far as recovery of axes and 'lathis' are concerned, the learned counsel for the appellants contended that the recoveries thereof were made on 20.12.2004 i.e. after about 22 days, which do not appear to be genuine, therefore, in his submission, the trial court wrongly convicted the accused under Section 393, IPC.

So far as sentence under Section 332, IPC, is concerned, he did not challenge the order of conviction in view of the fact that accused Nathu was caught hold of by PW-1 Datar Singh at the spot and accused Devilal inflicted injury on the person of Datar Singh (PW-1) and got Nathu free from his custody and thereafter they ran away. PW-1 Datar singh also sustained injuries. IN view of this overwhelming evidence, the order of conviction under Section 332, IPC, was not seriously challenged.

It is further contended that the accused-

appellants have already remained in jail for about 2 years and 4 months, therefore, their sentence of imprisonment awarded under Section 393, IPC, be reduced to a period of imprisonment already undergone by them.

I have considered the submissions of learned counsel for both the parties and minutely scanned the impugned judgment as well as the record of the trial court.

Initially a report was registered in 'Rojnamcha' (Exhibit P-20A) on 29th November, 2004 at about 8.00 AM and thereafter FIR No.112/2004 (Exhibit P-19) was registered in respect of the present incident. PW-1 Datar Singh, PW-2 Madan Lal, PW-3 Shabbir Beg and PW-4 Mohanram were members of petrolling-party and they all have stated about the incident; they also stated that accused Nathu was caught hold of by Datar Singh (PW-1), but accused Devilal inflicted injury on the person of Datar Singh and got Nathu free from his custody and thereafter they ran away. Accused Nathu and Devilal have been identified by them in the court also.

PW-5 Jawrilal, the truck-driver, although declared hostile so far as the identification of the accused is concerned, stated that three axes with pointed-wiring were fitted on the road and thereby his truck got punctured. He stated that it was done to make

an effort for robbery of his truck.

PW-17 Prahlad Singh, the Investigating Officer, has proved the documentary evidence produced on behalf of the prosecution including the recovery of weapons i.e. 'lathis' and axes used in the incident by accused-persons, which were recovered vide recovery-memo Exhibit P-8 to Exhibit P-11.

I have also considered the finding of the learned trial court. The trial court has considered the prosecution evidence in detail and has recorded a finding that the charge against accused under Section 398, IPC, is not made out, but they are liable to be convicted under Section 393, IPC, as well as under Section 332 read with Section 34, IPC.

After considering the submissions of learned counsel for the appellants and on examining the prosecution evidence on the record, I find that the finding of the trial court is based on proper appreciation of evidence and no interference is called for therein. The trial court has rightly convicted the accused-persons.

So far as reduction of sentence under Section 393, IPC, is concerned, it is relevant to mention that the Hon'ble Supreme Court in **Ajmer Singh Vs. State of Punjab – (2005) 6 SCC 633**, wherein trial court had

convicted the accused-persons under Section 393, IPC, to undergo 4 years RI, but, on an appeal, the High Court reduced it to a period of imprisonment already undergone by accused-persons. The said order was challenged by accused-persons and the Hon'ble Supreme Court gave notice to accused-persons for enhancement of the sentence of imprisonment and ultimately the Hon'ble Apex Court maintained the order of the trial court.

So far as the present case is concerned, the trial court has convicted and sentenced the accused-persons under Section 393, IPC, to 4 years RI and in view of the above referred judgment given in Ajmer Singh Vs. State of Punjab (Supra) by the Hon'ble Apex Court, I am not inclined to accept the prayer of the learned counsel for the appellants to reduce the sentence of the accused-appellants.

In view of the above discussion, I do not find any merit in any of the contentions of the learned counsel for the appellants and the appeal is accordingly dismissed.

(Narendra Kumar Jain) J.

//Jaiman//